

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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JOSE ANGUIANO-HERNANDEZ,

Case No. 2:13-cv-00926-MMD-CWH

Petitioner,

ORDER

v.

UNITED STATE OF AMERICA, et al.,

Respondents.

This is a represented immigration habeas matter under 28 U.S.C. § 2241 (dkt. no. 1). Petitioner has also filed an emergency motion for stay of deportation (dkt. no. 2). The Court has reviewed the petition pursuant to the Rules Governing Habeas Cases, Rule 4 and finds that it must be dismissed.

According to the allegations of the petition, petitioner is a native and citizen of Mexico.¹ On January 3, 1989, petitioner was granted Temporary Lawful Permanent Resident status while his application for amnesty was being considered.

Apparently, in 1989 petitioner was convicted of vehicular manslaughter with gross negligence and sentenced to two years in prison in California. Notwithstanding that petitioner had an amnesty claim pending and had received Temporary Resident status, on June 12, 1990, an immigration judge found no relief from deportation, and entered an order of deportation. On July 12, 1990, petitioner returned to Mexico.

¹In summarizing the allegations of the petition, the Court makes no findings of fact.

1 On March 1, 1993, however, petitioner was granted Lawful Permanent Resident
2 status based on his amnesty application and issued a green card. On September 5,
3 1995, petitioner attempted to enter the United States at the border inspection station at
4 Nogales, Arizona. He was paroled into the United States pending a determination of
5 whether or not he was eligible for lawful admission. He was ultimately deported again
6 on December 5, 1997, on the basis that he had been previously deported. Petitioner
7 was subsequently located again in Las Vegas, Nevada in 2012 and the prior deport
8 order was reinstated on October 15, 2012.

9 The present federal habeas petition is brought under 28 U.S.C. § 2241
10 exclusively against federal officials, including the United States Attorney General, the
11 Secretary of the Department of Homeland Security, and two subordinate federal
12 officials.

13 Petitioner challenges the current deportation order, arguing that the June 19,
14 1990, deportation order was obtained unlawfully and therefore reliance upon the
15 defective deportation order for reinstatement constitutes a “gross miscarriage of justice.”
16 He seeks “a Stay of Deportation Order pending the outcome of the instant petition” (dk.
17 no. 1 at 20).

18 Pursuant to the REAL ID Act, 8 U.S.C. § 1252(a)(5) and (b), a federal district
19 court does not have jurisdiction over a habeas petition seeking to challenge a removal
20 order. *See, e.g., Flores-Torres v. Mukasey*, 548 F.3d 708, 710-11 (9th Cir. 2008); *lasu*
21 *v. Smith*, 511 F.3d 881 (9th Cir. 2007). The exclusive method for obtaining judicial
22 review of a final order of removal is through filing a petition for review in the Court of
23 Appeals. *Id.* Because petitioner filed the present petition after the May 11, 2005,
24 effective date of the above-cited jurisdictional provision, dismissal of the petition rather
25 than transfer to the Court of Appeals is required where jurisdiction in the district court is
26 absent. *E.g., lasu*, 511 F.3d at 884 & 893.

27 Petitioner alleges that he has been deprived of his right to Due Process of Law,
28 but in truth he seeks judicial review of the removal order. Here, the *relief* sought is an

1 order from the district court under § 2241 declaring that federal immigration officials may
2 not lawfully remove petitioner from the United States and further staying the order
3 pending such a determination. The district court does not have jurisdiction to grant such
4 relief. The petition shall therefore be dismissed without prejudice for lack of jurisdiction.

5 IT IS THEREFORE ORDERED that the petition shall be DISMISSED without
6 prejudice for lack of jurisdiction over the subject matter.

7 IT IS FURTHER ORDERED that petitioner's emergency motion for stay of
8 deportation (dkt. no. 2) is DENIED.

9 IT IS FURTHER ORDERED that, to the extent that a certificate of appealability is
10 required in this procedural context, a certificate of appealability is DENIED. Jurists of
11 reason would not find the district court's dismissal of the petition for lack of jurisdiction
12 over the subject matter to be debatable or incorrect.

13 IT IS FURTHER ORDERED, pursuant to Rules 1(b) and 4 of the Rules
14 Governing Section 2254 Cases, that the Clerk of Court shall serve a copy of the petition
15 and this order upon respondents: (1) by having the United States Marshal, by the close
16 of business on the date that this order is entered, deliver same to the United States
17 Attorney for the District of Nevada or to the person designated thereby for acceptance
18 of service; (2) by certified mail upon the Hon. Eric Holder, Attorney General of the
19 United States, 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001; and (3) by
20 certified mail upon the Hon. Janet Napolitano, Secretary, United States Department of
21 Homeland Security, Washington, D.C. 20528.

22 IT IS FURTHER ORDERED that counsel for respondents shall enter a notice of
23 appearance, only, within ten (10) days of entry of this order. Thereafter, no response is
24 required from respondents herein other than to respond to any orders by a reviewing
25 court should an appeal be taken.

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1 IT IS FURTHER ORDERED that the Clerk of Court shall enter final judgment
2 accordingly, in favor of respondents and against petitioner, dismissing this action
3 without prejudice for lack of jurisdiction over the subject matter.

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5 DATED THIS 8th day of July 2013.

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8 MIRANDA M. DU
9 UNITED STATES DISTRICT JUDGE
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